

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

LEON KENNEDY,

Plaintiff,

No. 5:17-cv-11867

vs.

Hon: John Corbett O'Meara

ALLSTATE INSURANCE COMPANY,

Defendant.

_____/

BRENT INGRAM (P80491)
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**DEFENDANT'S MOTION TO COMPEL DEPOSITION OF PLAINTIFF AND
PLAINTIFF'S REPLACEMENT SERVICES PROVIDER AND FOR COSTS
INCURRED**

NOW COMES Defendant, ALL STATE INSURANCE COMPANY, by and through its attorneys, MOBLO, FLEMING & WATT, P.C., and pursuant to Fed. R. Civ. P. 37, respectfully moves for an Order compelling Plaintiff to produce executed authorizations and for costs incurred in filing this Motion. In support of this Motion, Defendant incorporates its Brief in Support.

WHEREFORE, Defendant respectfully requests that this Honorable Court Require Plaintiff and his Service Provider present for deposition within two weeks from the entry

of this Order and award Defendant costs and attorney's fees incurred by Defendant for the necessity of having to bring this Motion.

CERTIFICATION

Pursuant to Fed. R. Civ. P. 37(a)(1) and Local Rule 37.1, Defense Counsel attempted to meet and confer with Plaintiff's counsel in a good-faith effort to resolve the discovery matter which is the subject of this Motion. *See* October 25, 2017 Correspondence attached as **Exhibit A**.

Respectfully submitted,
MOBLO, FLEMING & WATT, P.C.

/s/ Lisa C. Baluha

BY:

PRERANA R. BACON (P69680)

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**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DEPOSITION
OF PLAINTIFF AND PLAINTIFF'S REPLACEMENT SERVICES PROVIDER
AND FOR COSTS INCURRED**

I. STATEMENT OF FACTS

Plaintiff filed this lawsuit seeking No-Fault PIP benefits for an July 11, 2016 automobile accident in Detroit, Michigan. Plaintiff claims he was injured in a head-on collision while he was a passenger in another's car. Both the driver and the responding officers deny that Plaintiff was a passenger at the time of the accident *See* July 11, 2016 Traffic Crash Report attached as **Exhibit B**. The driver denied even knowing Plaintiff. Yet, Plaintiff filed a PIP claim, alleging injuries to the left side of his head, right knee and thumb, and lower back, and requesting compensation for the replacement services provided by his brother, Ronnie Kennedy. As there was no auto policy which afforded Plaintiff coverage for said accident, he made a claim with Michigan's Automobile Insurance Placement Facility, which then assigned her No-Fault claim to Defendant.

On or about May 9, 2017, Allstate, through retained counsel, attempted to coordinate the scheduling of Plaintiff's EUO. An EUO was required in order to obtain information relevant to Plaintiff's No-Fault claim, including the facts of loss, and to determine whether coverage would be afforded to Plaintiff. Cooperation with such an investigation, including submission to an EUO, is required under the terms of the MACP Plan. Rather than permit his client to submit to the EUO, Plaintiff's Counsel filed this lawsuit on May 15, 2017, claiming that Plaintiff was wrongfully denied benefits, when, in fact, a determination had not been made.

On September 25, 2017, Defendant scheduled depositions of both Plaintiff and his alleged replacement services provider, Ronnie Kennedy, for October 26, 2017 at 10:00am and 1:00pm respectively. *See* September 25, 2017 Notices of Deposition Taking attached as **Exhibit C**. Notices were sent to Plaintiff's Counsel and filed with this Court. Defendant requested Plaintiff to advise as soon as possible whether he was willing to produce Ronnie Kennedy for the scheduled deposition. *See* September 25, 2017 Correspondence attached as **Exhibit D**. As of the time of the filing of this motion, Plaintiff has not indicated he will produce Mr. Williams. Plaintiff did not respond to Defendant's attempts to confirm the depositions until 4:18pm on October 25, 2017, the evening before the depositions, at which point Plaintiff wished to reschedule. *See* **Exhibit A**. Plaintiff responded on October 31, 2017. However, the attorney currently representing Plaintiff, Mr. Ingram, has yet to file an Appearance in this Court. As the only Appearance on record for Plaintiff is for an attorney, Mr. Finch, who is no longer with the Plaintiff Firm, Defendant requested that Plaintiff's Counsel file an appearance before continuing with discovery. *See* October 31, 2017 Correspondence attached as **Exhibit E**. As of the date of this Motion, no Appearance has been filed, and no depositions have been scheduled.

II. LAW AND ANALYSIS

A. THIS HONORABLE COURT HAS THE AUTHORITY TO COMPEL THE DEPOSITIONS OF PLAINTIFF AND PLAINTIFF'S REPLACEMENT SERVICE PROVIDER

Fed. R. Civ. Pro. 30(a)(1), provides that a party may depose any person, including a

party, without leave of court. Fed. R. Civ. Pro. 26(b)(1) provides that parties may obtain discovery regarding any non privileged matter that is relevant to any party's claim or defense. Additionally, for good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Fed. R. Civ. Pro. 26(b)(1)

There is no doubt, that Plaintiff's deposition testimony is relevant to Defendant's defense of this case. Because Plaintiff is seeking recoupment of No-Fault benefits, Defendant is entitled to depose Plaintiff regarding his claim and will be unduly prejudiced in the ability to prepare a defense in this case if it is unable to secure the same. Moreover, Plaintiff is the only witness who puts him at the scene of the accident. Accordingly, obtaining Plaintiff's version of events is critical to preparing a defense in this case. Finally, as Plaintiff is also seeking compensation for replacement services provided by his brother, Ronnie Williams, Mr. Williams testimony is also relevant to Defendant's defense of this case.

B. PLAINTIFF HAS PROVIDED NO JUSTIFICATION FOR FRUSTRATING AND IMPEDING DISCOVERY IN THIS CASE, WHICH SUBJECTS IT TO SANCTIONS AND COSTS.

Fed. R. Civ. Pro 37(5)(a) *Payment of Expenses; Protective Orders* provides in pertinent part:

If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if:

(I) the movant filed the motion before attempting in good faith to obtain the

- disclosure or discovery without court action;
- (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or
- (iii) other circumstances make an award of expenses unjust.

Defendant attempted to reschedule the deposition in question prior to filing this motion, but Plaintiff has been unresponsive. To Defendant's knowledge, no "other circumstances" or justifications exist for Plaintiff's failure to appear or produce his brother for their depositions. Plaintiff continues to frustrate discovery, thereby necessitating the filing of the instant Motion.

III. CONCLUSION

Defendant respectfully requests that this Honorable Court enter on Order compelling Plaintiff to give testimony at a deposition and produce Ronnie Williams for the same, and award Defendant costs and attorney's fees incurred by Defendant for the necessity of having to bring this Motion pursuant to Fed. R. Civ. P. 37(a)(5)(A).

Respectfully submitted,
MOBLO, FLEMING & WATT, P.C.

/s/ Lisa C. Baluha

BY:

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Dated: November 9, 2017

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on December 5, 2017.

By: ☐ U.S. Mail
☐ E-Mail
☒ E-Filing

/s/ Kellie L. Zahara

Kellie L. Zahara